

LAW OFFICES
CAREY, SCOTT, DOUGLAS & KESSLER, PLLC

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July 9, 2018

VIA EMAIL ONLY

State of West Virginia
Office of the Attorney General
State Capitol Complex, Bldg. 1, Room E-26
Charleston, WV 25305
rfpresponse@wvago.gov

Re: RFP #71

To whom it may concern:

Please accept this proposal, in response to RFP #71, for legal services in defense of the matter styled *C. Isaac Sponaugle, III v. James Conley Justice, II*, Civil Action No. 18-P-217, currently pending in the Circuit Court of Kanawha County, West Virginia. The following information is submitted for your consideration with respect to each of the applicable factors identified in the Attorney General's Outside Counsel Policy.

(1) *Whether the private attorneys possess the requisite skills and expertise needed to handles the legal matters in question.*

I and this firm have handled multiple lawsuits involving extraordinary writs and/or issues of constitutional law, and I personally have over 39 years of litigation experience. Examples of our experience with issues of constitutional law include the following:

- We were counsel for the plaintiff in *Peter Corbett v. Ronald Duerring and The Kanawha County Board of Education*, Civil Action No. 2:10-cv-1053 before the United States District Court for the Southern District of West Virginia, which involved the First Amendment rights of public employees.
- We were counsel for the plaintiff in *Marlene Mells v. Kenneth G. McCord et al.*, Civil Action No. 2:11-cv-0469 before the United States District Court for the Southern

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District of West Virginia, which involved a citizen's First Amendment rights in interactions with police officers.

- We were counsel for the plaintiff in *James D. And Elaine F. Dawson v. Mark W. Matkovich*, Civil Action No. 15-C-326 before the Circuit Court of Mercer County, West Virginia, which involved a challenge to a tax statute under the constitutional doctrine of intergovernmental tax immunity.
- We were counsel for the plaintiffs in *Estate of Garrison Tawney, etc., et al. v. Columbia Natural Resources, Inc., et al.*, Civil Action No. 03-C-10E, which involved a challenge under the contracts clause in the federal and state constitutions.
- We recently filed an *amicus curiae* brief in support of the defendant in *EQT Production Company v. Austin Caperton*, Civil Action No. 1:18-cv-72 before the United States District Court for the Northern District of West Virginia, which involves a challenge to the constitutionality of a statute.

Based on our experience, we are well versed in the analysis for interpreting and applying constitutional requirements. We are also well versed in the procedures and requirements for seeking extraordinary writs through our experience in such cases as *State ex rel. Hicks v. Bailey et al.*, Civil Action No. 08-C-307-S, before the Circuit Court of McDowell County, West Virginia; *State ex rel. Smith v. Mingo County Commission et al.*, Civil Action No. 08-C-198 before the Circuit Court of Mingo County, West Virginia; and *Ramey v. Lincoln County Commission*, Civil Action No. 10-C-87 before the Circuit Court of Lincoln County, West Virginia.

We also have experience working with the Office of the Governor. I have worked closely with the Governor and with the General Counsel to the Governor investigating issues involving the Department of Commerce and the RISE program.

(2) Whether the private attorneys possess requisite staffing and support to handles the scope of the litigation or matter.

I and my associate David Pogue will be handling this case. Mr. Pogue will be handling research and writing. Should there become a need for additional counsel, our firm has two other highly qualified attorneys and a dedicated staff ready and able to handle the scope this litigation.

(3) Whether the private attorneys, or any members of the private attorneys' law firm, have been subject to reprimand by the West Virginia State Bar, or other entities, for unethical conduct.

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No attorney at this firm has been reprimanded by the West Virginia State Bar, or any other entity, for unethical conduct.

(4) *Whether the private attorneys have been peer rated, and if so, what peer ratings they have received, along with any other recognitions or awards for legal services.*

I have received the following honors:

- AV rating with Martindale Hubble;
- Super Lawyers: General Litigation, Business Litigation, Criminal Defense: White Collar;
- Best Lawyers: 2016 Charleston, WV Best Company Litigation Lawyer of the Year;
- Best Lawyers: 2012 Charleston, WV Criminal Defense: White-Collar Lawyer of the Year;
- Benchmark Litigation: Local Litigation Star - Civil Litigation;
- Chambers and Partners: General Commercial Litigation;
- Fellow, International Society of Barristers;
- Attorney General's Award for Excellence in Management by Attorney General William P. Barr;
- Awarded United States Attorney's Flag by Attorney General Dick Thornburgh in Recognition of Prosecution of Public Corruption;

A copy of my resume is attached for your review.

(5) *The estimated fees, costs and expenses of the private attorneys to perform the legal services requested.*

Hourly rates:	Michael W. Carey (attorney)	\$350.00 per hour
	David R. Pogue (attorney)	\$275.00 per hour
	Nancy E. Smith (paralegal)	\$100.00 per hour

Tasks to be assigned as follows:

- Research: Mr. Pogue
- Drafting/responding to pleadings: Mr. Pogue (reviewed by Mr. Carey)
- Discovery: Mr. Carey / Mr. Pogue
- In Court: Mr. Carey / Mr. Pogue

We estimate that it will take less than 75 hours to complete this matter.

Per-unit costs for expenses such as copying: No charges for copies.

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Travel expenses: We do not charge for local travel within the City of Charleston. We do not expect any out of town travel in this case, but if such travel becomes necessary, travel expenses will be billed at 54.5 cents per mile, plus tolls at cost.

Additional attorney time while traveling: Attorney time is billed for out of town travel, though again, we do not expect any out of town travel in this case.

(6) *The willingness of the private attorneys to enter into alternative billing arrangements.*

I am willing to enter into an alternative billing arrangement.

(7) *Whether the private attorneys are in compliance with all applicable laws of the State of West Virginia.*

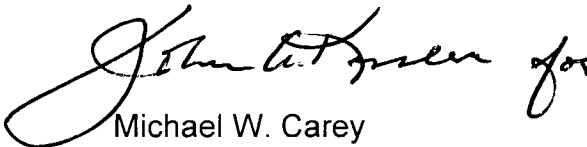
All of the attorneys at this firm are in compliance with all applicable laws of the State of West Virginia.

(8) *Any potential conflicts of interest between the private attorneys and the State.*

None.

In conclusion, I and this firm are well-suited to represent the Office of the Governor in this litigation. Thank you for your attention to this proposal. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,



Michael W. Carey

Michael W. Carey

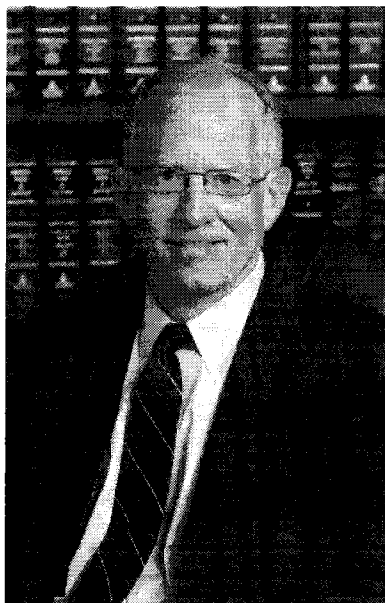
Member since 1999

Location: Charleston, West Virginia

Phone: (304) 345-1234

Fax: (304) 342-1105

Email: [Contact Us \(/contact-us\)](/contact-us)



Mike Carey's legal career has been primarily focused on litigation. After serving as a law clerk to the Honorable John A. Field, Jr. of the United States Court of Appeals for the Fourth Circuit, he joined the United States Attorneys Office for the Southern District of West Virginia in 1980. As an assistant, Mike prosecuted cases involving public corruption, fraudulent tax shelters and violations of the Federal Coal Mine Health and Safety Act.

In 1987, Mike was appointed by President Ronald Reagan and confirmed by the United States Senate to be the United States Attorney for the Southern District of West Virginia. In that capacity, Mike supervised an office of twenty-five Assistant United States Attorneys and continued to personally try many cases. In 1989, Mike was chosen West Virginian of the Year by the Charleston Gazette for his prosecution of public corruption.

As United States Attorney, Mike was appointed to serve on the Attorney General's Advisory Committee where he was elected Vice-Chairman by his peers. In 1991, Mike was asked to serve as the Principal Associate Deputy Attorney General at the

Department of Justice where he served as the primary adviser for criminal matters to the Deputy Attorney General of the United States.

In 1993, Mike left the government and started his own firm in private practice now known as Carey, Scott, Douglas & Kessler, PLLC. Mike primarily works on cases involving commercial disputes, class actions, white collar criminal defense and governmental regulatory proceedings.

Mike has been recognized by his peers in *The Best Lawyers in America* for his skill in the practice areas of Commercial Litigation and Criminal Defense: White-Collar every year since 2008; and for Bet-the-Company Litigation since 2014, having been given the honor of 'Bet-the-Company Litigation Lawyer of the Year' in 2016.

Areas of Practice



Civil Litigation
Personal Injury
Construction Law

Carey, Scott, Douglas & Kessler, PLLC
(<http://csdlawfirm.com/>)

Internal Corporate Investigation
White Collar Criminal Defense
MSHA, OSHA, EPA etc.

Litigation Percentage

90% of Practice Devoted to Litigation

Bar Admissions

West Virginia, 1979
U.S. District Court Southern District of West Virginia
U.S. District Court Northern District of West Virginia
U.S. Court of Appeals 4th Circuit
U.S. Supreme Court

Education

West Virginia University College of Law, Morgantown, West Virginia

J.D. – May, 1979
Honors: Graduated First in Class of 121
Honors: Order of the Coif
Honors: Phi Delta Phi Province III National Graduate of the Year
Law Review: WVU Law Review, Editor-in-Chief

Virginia Polytechnic Institute and State University

B.A. Economics – 1976
Honors: Graduated with Distinction
Honors: Phi Kappa Phi Honor Society

Honors and Awards

Selected West Virginian of the Year, Sunday Gazette Mail, Charleston, West Virginia, 1989
Awarded United States Attorney's Flag by Attorney General Dick Thornburgh in Recognition of Prosecution of Public Corruption
Attorney General's Award for Excellence in Management by Attorney General William P. Barr.
Fellow, International Society of Barristers
Chambers and Partners: General Commercial Litigation
Benchmark Litigation: Local Litigation Star-Civil Litigation
Best Lawyers: 2012 Charleston, WV Criminal Defense: White-Collar Lawyer of the Year
Best Lawyers: 2016 Charleston, WV Bet the Company Litigation Lawyer of the Year
Super Lawyers: General Litigation, Business Litigation, Criminal Defense: White Collar

Past Employment Positions

1993-1999, Carey, Hill, Scott, Winter & Johnson PLLC, Partner
1986-1993, Presidentially Appointed United States Attorney, So. Dist. of WV
1991-1992, Principal Associate Deputy Attorney General